

DECISION AND ORDER

To commence the statutory period of appeals as of right CPLR (5515 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
IAS PART, PUTNAM COUNTY**

**Present: Hon. Andrew P. O'Rourke
Supreme Court Justice**

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ANDREAS SARDELLI,

Plaintiff,

-against-

JOHN J. MAALOUF ET AL,

Defendant.
-----X

INDEX NO.:2118/2009
MOTION
DATE:10/13/2009

The following documents numbered 1 to 16 read on this motion by defendant to dismiss the complaint; cross motion by plaintiff for sanctions.

- Notice of Motion- Affidavits 1
- Cross Motion 9-10
- Answering Affidavits
- Replying Affidavits
- Affidavits
- Pleadings-Exhibits-Stipulations-Minutes 3-58, 11-16
- Briefs: Plaintiff
- Defendant

Motion is decided as follows:

Defendant moves to dismiss the complaint alleging there is another action between the same parties involving the same circumstances in another Court.

In defendant's Memorandum of Law, it is alleged plaintiff has no claim for defamation. There is presently pending an action between the parties in Supreme Court Westchester County and that the complaint fails to state a valid cause of action.

Defendant states Andreas Sardelli and Wolfgang Kuhl were co-owners of Pioneer natural Pools LLC. Defendant wrote a letter to plaintiff complaining that the pool installed on defendant's property was defective and the contract between the parties was void ab initio as a result of fraud to the essence of the contract and demanded a return of defendant's deposit.

Defendants states only the two owners were recipients of the letter in question. Defendant alleges Mr. Kuhl still works at Pioneer Pools and plaintiff has not asserted any monetary damages as a result of the letter.

On May 21, 2008, defendant commenced an action against plaintiff in Westchester County, presently pending before Judge Loehr.

Defendant states plaintiff has not set forth facts to prove any action for defamation. Defendant alleges plaintiff was unable to obtain a permit from White Plains to build the pool. The engineers plans were rejected as incompetent and criticized by the Planning Commissioner of the City of White Plains, Susan Hable.

After the plans were rejected, Mr. Kuhl agreed with defendant that his deposit should be returned and Mr. Kuhl agreed to try to convince plaintiff to "do the right thing."

Defendant also seeks sanctions against plaintiff for commencing a frivolous action.

The Court notes no sworn affidavit by John J. Maalouf is annexed to his motion and the

Memorandum of Law is likewise unsworn.

Plaintiff cross moves to strike defendant's answer and seeks sanctions in the sum of \$1400. Plaintiff states a verified complaint was served. Defendants replied with an unverified answer which was rejected. Additionally, since Maalouf is a party to this action all his affidavits must be notarized, he cannot simply affirm. Plaintiff states aside from not being verified, Maalouf did not sign the purported answer as required by the CPLR and thus the "answer" maybe treated as a nullity. Mr. Maalouf has not corrected the defects of his papers to date.

Plaintiff states defendant refers to an action pending in Supreme Court Westchester County but does not annex the entire complaint so that this Court could be apprised of the causes of action stated therein and how they compare to this pending action.

After a review of both motions the Court finds the papers submitted by the named defendant to dismiss the complaint herein defective. Defendant submits an unsigned Notice of Motion and no sworn, signed affidavit in support of his motion. A memorandum of law is not sufficient.

Defendant's motion for dismissal of the complaint is denied.

Plaintiff cross moves for sanctions by way of legal fees in the sum of \$1400 for having to address defendant's defective motion.

In his letter dated July 29, 2008, Mr. Maalouf writes to plaintiff and states "I find it highly amusing that you believe you can find an attorney who will be able to stand up to me. We both know that this is impossible, I have both the talent and the truth on my side, you will lose, there is no question of the outcome."


Based on the defective papers Mr. Maalouf has submitted to this Court, winning or losing

are greatly at issue.

The Court will grant plaintiff's motion for sanction against defendant John J. Maalouf in the sum of \$1400. Defendant will pay over said sum to plaintiff's counsel within 10 days of receipt of a copy of the order, by mail, with notice of entry.

In the event said sum is not timely remitted plaintiff will enter judgment against John J. Maalouf and execute accordingly.

This constitutes the decision and order of the Court.



Andrew P. O'Rourke
Justice of the Supreme Court

Dated: October 16, 2009
Carmel, NY

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